STATE OF ILLINOIS ILLINOIS COMMERCE COMMISSION

North Shore Gas Company)	
The Peoples Gas Light and Coke Company)	
)	Docket No. 13-0550
Petition Pursuant to Section 8-104 of the Public)	Docket No. 13-0330
Utilities Act to Submit an Energy Efficiency Plan)	

INITIAL BRIEF OF THE CITIZENS UTILITY BOARD AND THE CITY OF CHICAGO

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Now comes the Citizens Utility Board ("CUB"), by and through one of its attorneys and the City of Chicago ("City"), by and through its attorney, Corporation Counsel Stephen R. Patton, to file this Initial Brief pursuant to the Rules of Practice of the Illinois Commerce Commission ("ICC" or "the Commission"), 83 Ill. Admin. Code § 200.800, and the schedule established in this case by the Administrative Law Judge ("ALJ").

I. Introduction

North Shore Gas Company ("NS") and The Peoples Gas Light and Coke Company ("PGL") (together, the "Utilities" or "Companies") submitted their 2014-2017 Energy Efficiency Plan ("Plan") pursuant to Section 8-104 of the Public Utilities Act ("the PUA" or "the Act"). 220 ILCS 5/8-104. The Companies' Plan presents a portfolio of natural gas energy efficiency programs, including programs administered in conjunction with the Illinois Department of Commerce and Economic Opportunity ("DCEO"), designed to achieve the Energy Efficiency Portfolio Standard ("EEPS") statutory energy savings goals within the statutory spending screens.

The Commission should approve the Plan with CUB-City's recommendations, which would ensure that the Companies will achieve the maximum possible energy efficiency savings under the spending screen. The Commission should also require the Utilities to file a revised Plan incorporating these recommendations.

II. NS-PGL Should Offer Air Sealing to Maximize Energy Savings

NS-PGL witness Mr. Marks describes the Companies' laudable objective "to maximize the savings that we'll be able to achieve with the budget that we have." Tr. at 21. Given this objective, it is difficult to understand why the Companies have omitted one of the most widely implemented and admittedly cost-effective measures available for natural gas utilities that has become part of the "standard of care" for residential energy retrofits – comprehensive Air Sealing. CUB-City Ex. 3.0 at 9; CUB-City Ex. 4.0 at 6; NS-PGL Ex. 3.0 at 7. Air Sealing involves minimizing air infiltration in the building envelope, including external walls, windows, roofs and floors through air and duct sealing, insulation, caulking, and weatherstripping. CUB-City Ex. 1.0 at 7-8. AG witness Mr. Mosenthal correctly observes that Air Sealing "is critically important" and, without it, the Companies' portfolio effectively focuses on very minor measures and ignores "the most important savings opportunities in the home." AG Ex. 1.0 at 9; AG Ex. 2.0 at 24. The Companies include only two smaller Air Sealing measures with estimated participation of only 184 customers per year total for both Utilities. CUB-City Ex. 1.0 at 9. Without comprehensive Air Sealing, air leaks in most existing homes add up to an open window in the home. *Id.* at 8. CUB-City witness Ms. Devens is unaware of any other energy efficiency program in Illinois that does not offer adequate Air Sealing measures. *Id.* at 11.

In a period when it is generally more expensive for the Utilities to obtain savings and where their funds are limited, it is increasingly important to include measures which have high

Total Resources Cost test ("TRC") values, especially where the Residential portions of the Companies' portfolio barely pass the TRC test with a value of 1.01. See NS-PGL Ex. 1.0 at 5. Although the Companies may not be able to cost-effectively achieve the statutory savings goals, any omission of a highly cost-effective measure that is widely adopted by other utilities and the Illinois Department of Commerce and Economic Opportunity ("DCEO") deserves close Commission scrutiny. The "hard evidence" upon which the Companies conclude that they will be unable to cost-effectively achieve the statutory savings goals consists of their past experience implementing their energy efficiency portfolio. *Id.* at 6. Notably, however, that past experience in portfolio implementation lacks one of the most cost-effective and widely adopted measures used by gas utilities nationwide – Air Sealing. The Commission should require the Companies to implement proven cost-effective measures that are absent from their portfolio and which, if implemented, would materially increase the total savings potential of the Companies' portfolio of measures. This is especially true for Air Sealing measures, since those measures are essential to homeowners realizing savings from every other installed energy efficiency measure -i.e. a high-efficiency furnace saves less energy than it could have if the air it heats escapes the home because the home is not properly sealed. CUB-City Ex. 1.0 at 8; CUB-City Ex. 2.0 at 4.

Although the Commission has the authority to reduce the savings goals that the Companies must achieve before statutory penalties are levied against the Companies, the Commission should require the Companies to include all proven and cost-effective measures before exercising that authority, otherwise ratepayers are unjustly charged for a portfolio which fails to not only achieve the statutory goals, but also fails to maximize savings under the already reduced goals. 220 ILCS 5/8-104(f)(1); 220 ILCS 5/8-104(d).

CUB-City witness Mr. Francisco, who has specific training and experience in the effect of energy efficiency on indoor air quality, testified that Air Sealing – understood as the sealing of gaps between the conditioned space of a home and unconditioned spaces – is one of the most cost-effective energy efficiency measures that a homeowner or tenant could implement. CUB-City Ex. 2.0 at 2-3, CUB-City Ex. 2.1. NS-PGL witness Mr. Marks claimed that the Companies are concerned that reducing the air exchange due to Air Sealing may increase radon concentrations. NS-PGL Ex. 5.0 at 6. The Companies provide no evidence that radon is a concern in their service territory, and indeed, Mr. Francisco testified that he is aware of no study that finds a statistically significant correlation between Air Sealing and changes in radon levels in addition to no lawsuits tying Air Sealing to radon levels. CUB-City Ex. 2.0 at 3. In fact, the evidence of record indicates that the risk of radon overexposure in the PGL-NS service territories is lower than in many other locations in Illinois and the Midwest due to the proximity of Lake Michigan. CUB-City Ex. 2.0 at 4; CUB-City Ex. 4.0 at 6. AG witness Mr. Mosenthal testified that "air sealing is one of the most effective and common efficiency measures being deployed throughout the county, and is being done cost-effectively." AG Ex. 2.0 at 23. In his thirty years of experience in energy efficiency, Mr. Mosenthal is unaware of any other utility having this air quality concern. Id. Commonwealth Edison Company ("ComEd"), Nicor Gas Company ("Nicor"), Ameren Illinois Company ("Ameren"), and DCEO all offer Air Sealing and have not required radon testing as a part of implementation. *Id.* NS-PGL witness Mr. Marks concedes that he is unaware of any other utilities in North America that refuse to implement Air Sealing because of concerns about radon or that require radon testing. Tr. at 25.

Both Companies are wholly-owned subsidiaries of Peoples Energy, LLC, which is a wholly-owned subsidiary of Integrys Energy Group, Inc. ("Integrys"). NS-PGL Ex. 1.0 at 9.

Integrys allows consumers in other states with higher levels of background radon, who are customers of other wholly-owned subsidiaries of Integrys, to participate in programs that deliver Air Sealing without radon testing in regions with higher radon overexposure risk than in the NS-PGL service territory. CUB-City Ex. 2.0 at 10-11; CUB-City Ex. 4.0 at 6. No other program administrator in Illinois requires radon testing for their Air Sealing programs. AG Ex. 2.0 at 24. Although CUB-City agree with the Companies in implementing a "do no harm" approach, CUB-City witness Mr. Francisco testified that such an approach "cannot be based on speculation, but must use the best available empirical evidence." CUB-City Ex. 4.0 at 2. Radon testing of the kind that Mr. Marks believes should be included in an Air Sealing program "does not provide either the utility or the customer with reliable information." *Id.* at 3-4. The end result of the kind of testing that the Companies believe should be included is actually a misinformed customer base. *Id.* at 4.

Although the U.S. Department of Energy's ("DOE") Weatherization Assistance Program Notice 11-6 considers radon to be a "potential hazard," that notice importantly **does not require** the same testing that Mr. Marks proposes while Air Sealing remains a "centerpiece" of the DOE's programs. CUB-City Ex. 2.0 at 6; CUB-City Ex. 4.0 at 2. Mr. Francisco described studies which found that "weatherization did not negatively impact radon levels," "weatherization homes may have actually experienced a decrease in radon," "there was no statistical evidence that radon was impacted by weatherization," and that "weatherization was not statistically correlated with radon changes" – all of which remain unrebutted by the Companies. CUB-City Ex. 2.0 at 9. Mr. Francisco concluded that "the available evidence supports neither an exclusion of air sealing measures nor a requirement to test for radon." CUB-City Ex. 4.0 at 3.

Nevertheless, if ordered to include Air Sealing in their portfolio, Mr. Marks claims that the Utilities believe it would be appropriate to start with a pilot program that covers sump pumps and dirt floors and informs customers about radon. NS-PGL Ex. 5.0 at 7. CUB-City do not believe a pilot program is necessary but do agree that identifying, for eligibility or mitigation, customers with bare dirt floors and open sump pumps is appropriate as is informing customers with the United States Environmental Protection Agency ("EPA") Citizens' Guide to Radon. *See* CUB-City Ex. 4.0 at 5.

The final screening¹ of Air Sealing through the Total Resource Cost test ("TRC") establishes that "air sealing without radon testing is cost-effective ... with a TRC ranging from 2.11-2.46." City Cross Ex. 1.0 at 2 (NS-PGL DRR to COC 1.2). Even with the costs of radon testing included, the Companies concluded that the TRC for Air Sealing ranges from 1.29-1.59. *Id.* Importantly, these TRC values are likely low because the companies lacked good estimates of one stream of savings – synergistic savings with other measures due to Air Sealing. *Id.*

The Companies state that they would implement an Air Sealing program if ordered to do so by the Commission. City Cross Ex. 1.0 at 1 (NS-PGL DRR to COC 1.1). The Utilities have the ability to implement such a program. *Id.* Moreover, the Companies identify the procedural vehicle – a compliance filing in this proceeding – through which they could amend their Plan to include Air Sealing. *Id*; NS-PGL Ex. 5.0 at 7. In order for their portfolio to partner effectively and maximize participation with the electric distribution utility in their service territory, ComEd,

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¹ The re-screening of the TRC for an Air Sealing program included: (1) certain benefits that were earlier omitted or (2) certain benefits that were improperly reduced. Those benefits were avoided electricity costs, environmental benefits, escalation of gas costs, escalation of participant savings, and differing study results as to natural leakage. City Cross Ex. 1.0 at 2 (NS-PGL DRR to COC 1.2). The re-screening also included Dr. Brightwell's adjustments offered in his rebuttal testimony. *Id*; Staff Ex. 4.0 at 2. Finally, the re-screening also reduced the projected savings by 25% to offer a conservative estimate of the TRC for Air Sealing, given that neither Staff nor the Companies provided a detailed estimate of mitigation costs in the event that radon testing were required. City Cross Ex. 1.0 at Attachments 1, 2 (NS-PGL DRR to COC 1.2); Staff Ex. 4.0 at 4-5.

it is logical that the portfolio should include the one measure which ComEd partners with other gas utilities in implementing – Air Sealing. *See* NS-PGL Ex. 1.0 at 9. CUB-City agree with the Companies that effectively partnering with ComEd would help deliver a "better customer experience" to the Companies' ratepayers. *Id.* Moreover, to achieve "consistency in program design," the Companies should design their portfolio like other gas utilities and offer Air Sealing like Ameren Illinois Company ("Ameren") and Nicor offer to their customers. *Id.*; AG Ex. 2.0 at 22.

The Companies agree with CUB-City that, even adopting the adjustments proposed by Staff witness Dr. Brightwell, Air Sealing is cost effective in PGL and NS territories – with or without radon testing. Tr. at 26. CUB-City recommend the Commission follow the steps it took in Ameren's 2010 plan filing and order the Companies to present a revised Plan. Final Order in ICC Docket No. 10-0568 at 30-31. The revised Plan should include increased savings goals that are in line with what the Companies project to achieve with the inclusion of a comprehensive Air Sealing program as a Residential offer.

III. NS-PGL Should Collect Funds from Residential Ratepayers up to the Statutory Spending Screen

The Plan and accompanying testimony describe funds collected by and spent on each and every different customer delivery service class. The Companies claim it was "not practical to keep the goals at approximately the same proportion as the revenues" for the respective delivery service class and portfolio of programs. NS-PGL Ex. 1.0 at 11-12. NS-PGL states that "the proportion of savings for the commercial and industrial ("C&I") class is greater than the proportion of revenues the Utilities collect from the C&I class," because "there are not enough cost effective energy savings opportunities in the residential sector to keep these proportions equivalent." NS-PGL Ex. 3.0 at 5. CUB-City witness Ms. Devens explains that "it appears that

NS-PGL applied the spending screen across all customer classes collectively, so that the screen acts as an overall total as opposed to calculating a 2% cap by customer class." CUB-City Ex. 3.0 at 5.

NS-PGL justifies the Companies' decision to not fully collect from the residential sector by claiming that it is "becoming more and more difficult to find opportunities in the residential sector that are equivalent to its revenue share of the customer base." NS-PGL Ex. 1.0 at 11-12. The example NS-PGL provides is that "the potential increase in Department of Energy ("DOE") residential gas furnace efficiency standards could make achieving cost-effective residential energy savings even more difficult in the future." NS-PGL Ex. 1.0 at 11-12. Yet, NS-PGL wholly overlooks other opportunities in the residential and multifamily sectors. CUB-City Ex. 3.0 at 5-6. The Companies fail to include comprehensive Air Sealing measures—some of the best and most comprehensive efficiency measures available. CUB-City Ex. 1.0 at 9. The Companies have also failed to offer a comprehensive multifamily program that delivers long term savings on a wide scale proportionate to the potential savings opportunity that exists in the city of Chicago. *Id.* at 15.

NS-PGL is not currently providing customers the maximum opportunity to participate in programs under the Act. CUB-City Ex. 3.0 at 6. Residential customers deserve to have access to energy efficiency programs that are as close to the statutory goals as possible, or in other words, up to the spending screen. *Id.* at 7. Under the Act, Section 8-104 energy efficiency programs must be cost-effective at the portfolio level, meaning that the benefits these programs produce must be greater than their costs. *Id.* Residential customers deserve to have access to all of those economic, environmental, and societal benefits that are available under the statutory spending screen. *Id.* If NS-PGL were willing to provide a full portfolio to residential and

multifamily customers that included more comprehensive measures, their claim of a lack of additional cost-effective measures would be more credible. *Id.* The Companies could back up this claim with better evidence than 1) previous experience based on the Companies' past failures to offer a comprehensive portfolio, or 2) the problematic potential studies. *Id.* at 6.

The Commission should order NS-PGL to redesign the portfolio with CUB-City's recommendations related to the residential and multifamily customer sectors. CUB-City does not desire to micromanage how NS-PGL collects from different customer sectors, but recommends that the Commission order the Companies to collect from the residential sector as needed under the spending screen to support the inclusion of Air Sealing measures, comprehensive multifamily offerings, and joint programs with ComEd. If NS-PGL collects funding for energy efficiency programs from residential and small business customers closer to the amount allowed under the spending screen, that will increase budgets for programs and result in annual savings totals that are closer to the original statutory goals. *Id.* at 7.

IV. The Commission Should Reject the Adjustable Savings Goal Proposal

The Utilities propose an "Adjustable Savings Goal" process to adjust the savings goals during implementation of the Plan due to changes in either the Technical Reference Manual ("TRM") or in net-to-gross ("NTG") ratios. NS-PGL Ex. 1.0 at 8. To the extent that TRM values change the savings attributable to any measure, the Utilities propose that their already reduced savings goals, approved by the Commission, should be further adjusted upward or downward. *Id.* at 25. This proposal should be rejected by the Commission as it virtually eliminates all performance risk for the Companies by shifting that risk to ratepayers.

NS-PGL witness Mr. Marks claimed that, without an adjustable savings goal, the Companies could achieve the exact participation rates contained in their Plan but still fail to

achieve the approved goals due to changes in the TRM. *Id.* However, this is not an indicator of unfairness, as implied by Mr. Marks. The Act clearly provides penalties for failing to meet "the efficiency standard specified in subsection (c)," which specifies particular "annual incremental savings requirement[s]", not for failing to reach participation levels or any other measure of energy efficiency implementation performance. 220 ILCS 5/8-104(i). Penalizing the Companies for failing to meet their savings goals is not unfair, and even if so, is required by the Act.

Moreover, it would be poor policy for the Commission to credit the Companies with savings they achieved based on assumptions that were changed. *See* AG Ex. 2.0 at 11-12. The Commission would impermissibly insulate the Companies from any adjustments to their yearly plan to implement the measure affected by changing TRM or NTG values and would shift risk of underperformance to ratepayers. *See* CUB-City Ex. 3.0 at 25; ELPC Ex. 1.0 at 12. Finally, such a policy would remove the Companies' incentive to modify programs and practices to maximize the benefits that ratepayers receive by making the Companies' indifferent to actual performance and tying their risk of penalty to the TRM and NTG process instead.

Mr. Marks also claimed that, due to the Companies' performance-based contract with their implementation contractor, it would be impossible to administer the contract if the TRM changes the goal criteria upon which the contractor is being compensated. NS-PGL Ex. 1.0 at 25. However, the Companies never explain why a performance contract could not include provisions for changing standards nor any requirement to enter into such a contract in the first place. Mr. Marks admits that the exact mechanism upon which NTG will be applied in the Plan is unclear, nevertheless he testified that retrospective application of NTG results pose an issue for the Companies and their implementation contractor. *Id.* at 26. AG witness Mr. Mosenthal correctly observes that this supposed incentive to ensure continued performance unreasonably

assumes that the Commission would reject the Companies' proposed adjustments. AG Ex. 2.0 at 14. If adopted, the Companies' proposal would actually remove any incentive for contract implementers to maximize NTG values. *Id*.

NS-PGL witness Mr. Marks claimed that the Companies would still have the incentive to modify their programs and shift away from less cost-effective measures because the Companies are obligated to act prudently. NS-PGL Ex. 5.0 at 4; Tr. at 19-20. Due to this obligation, Mr. Marks believes that the Companies would have an incentive to adjust their spending in response to a program that was clearly routinely under-performing. NS-PGL Ex. 5.0 at 4. CUB-City agree with AG witness Mr. Mosenthal that such a belief is unrealistic. AG Ex. 2.0 at 12. The day-to-day actions of the program staff are what fundamentally impact performance, scrutiny over which is difficult if not impossible to achieve and, even if achievable, is resource-intensive to the point of being impractical. *Id.* at 12-13. Instead of requiring such micro-managing, the Commission should focus its efforts on the overarching incentives and the penalty-scheme imposed by the General Assembly.

Staff witness Ms. Hinman endorsed the Companies' proposal because she believes that if not adopted, the Companies would have an incentive to oppose updates to TRM and NTG values that reduce savings. Staff Ex. 1.0 at 27. However, as a SAG member, Ms. Devens testified that she has witnessed the Companies working with other stakeholders to incorporate the best data available in order to make their forecasts and results as accurate as possible, even without adoption of the Companies' instant proposal for adjustable savings. CUB-City Ex. 3.0 at 27. Ms. Devens testified that she had witnessed utilities making necessary changes to their portfolios to ensure that savings are achieved for the benefit of Illinois ratepayers without the performance-risk-insurance provided by the Companies' proposal. *Id*.

The Commission should continue the existing regulatory framework which calls for the Companies to respond to changes in TRM or NTG values and reject the Companies' proposal. Even Staff witness Ms. Hinman recognizes that this proposal is essentially a "set-it-and-forgetit" approach. Staff Ex. 1.0 at 25. The Companies' proposal removes all risk for the Utilities if they implement the letter of the Plan, regardless of whether their ratepayers are benefitted. *See* AG Ex. 2.0 at 17.

V. The Commission Should Reject the Companies' and Staff's Flexibility Proposals and Adopt the AG's Proposal

The Companies request the latitude to reallocate funding between programs, add or delete measures and programs, and increase or decrease incentive amounts, and adjust or rebalance the portfolio in response to individual program performance or emerging market/technology opportunities. NS-PGL Ex 1.2 at 29. In NS-PGL's previous plan order in ICC Docket Number 10-0564, the Commission adopted the parameters established in ICC Docket Number 10-0570, the docket approving ComEd's previous three year plan filing, and ordered NS-PGL to discuss with the SAG any program changes, any shift in the budget that results in a 20% or greater change to any program's budget or that eliminates or adds a program, and to receive Commission approval to shift more than 10% of spending between residential and C&I sectors without Commission approval. Final Order in ICC Docket No. 10-0564 at 91-92.

The previously approved Commission parameters are reasonable safeguards. CUB-City Ex. 3.0 at 16. Unfettered flexibility would allow the Companies to invest heavily in the cheapest programs at the expense of more expensive programs with longer and more significant savings.

Id. These recommendations strike a balance between providing NS-PGL with the necessary flexibility to manage the portfolio while still ensuring that the Company administers the

programs approved in this Plan in the manner approved in this Plan filing and comes as close as possible to meeting the statutory annual incremental goals. *Id*.

Staff also made recommendations regarding the Companies' flexibility. Staff states that "utilities should be granted the flexibility to prudently respond to changing circumstances over the course of the Plan." Staff Ex. 1.0 at 17. Staff specifies that this flexibility should *only* be exercised "in order to maximize cost-effectiveness and net economic benefits for ratepayers." Id. (emphasis added). Staff recommends that the Commission approve five requirements related to the Companies' flexibility, all of which only allow the Companies to make changes that would involve shifting funds to more cost-effective programs:

- 1) The Companies can only adjust their Plan "in order to increase net benefits for ratepayers;"
- 2) The Companies must "stay apprised of and respond prudently and reasonably to information concerning measure and program level cost-effectiveness" to "ensure the Plan produces and maximizes the net benefits to Illinois ratepayers;"
- 3) The Companies file detailed quarterly reports with the Commission describing how they have exercised flexibility;
- 4) The Companies should include cost-effectiveness screening results for new energy efficiency measures in these quarterly reports; and
- 5) The Companies should limit the participation of cost-ineffective measures to no more than the levels proposed in their Plan, with the following exceptions:
 - a. If a measure is cost-effective in the vast majority of building types to which it is directed and marketed to, the Companies need not attempt to limit participation of the energy efficiency measure within a program year.
 - b. If the cost-ineffective measures are a necessary component for implementing cost-effective measures (e.g., comprehensive whole home dual fuel programs), the Companies need not attempt to limit participation of the energy efficiency measure within a program year.
 - c. The Companies shall provide cost-effectiveness screening results in their quarterly reports filed with the Commission in this docket for measures previously projected to be cost-ineffective that become cost-effective over the course of the Plan such that it is clear that limitations on participation of these measures is no longer necessary. *Id.* at 18-19.

At the heart of Staff's recommendations is a wish for the Commission to establish the minimum cost-effectiveness requirement at the measure level, which would be measured throughout the Plan period, despite Staff's acknowledgement that both Section 8-104(f)(5) of the Act and the

Commission's last Order for the Companies' plan establish that the plan must be cost-effective only at the portfolio level. *Id.* at 24. Staff would, in essence, have any measure that dips below a 1.0 in cost-effectiveness terminated immediately unless the Companies could somehow demonstrate it fit into an exception. This runs directly counter to the ICC's most recent order on the subject of cost-effectiveness in ICC Docket Number 11-0341.

The cost-effectiveness standard for an energy efficiency portfolio in Illinois is the TRC test. The Illinois Power Agency ("IPA") Act defines the TRC test as "a standard that is met if, for an investment in energy efficiency or demand response measures, the benefit-cost ratio is greater than one." 20 ILCS 3855/1-10. The PUA defines "cost-effective" energy efficiency measures as measures that "satisfy the total resource cost test," and requires utilities to "demonstrate" that the "overall portfolio of energy efficiency measures... are cost-effective using the total resource cost test and represent a diverse cross-section of opportunities for customers of all rate classes to participate in the programs." 220 ILCS 5/8-104(a), 220 ILCS 5/8-104(f)(5). Of note is the PUA's specification that the "overall portfolio" of measures must be cost-effective, not individual measures. CUB-City Ex. 3.0 at 18.

Staff's recommendations are founded on irrelevant sections of the Act and previous Commission orders in unrelated dockets. *Id.* at 19. Ms. Hinman quotes generously from the Commission's Final Order in ICC Docket Number. 12-0132 to support her recommendations. That docket involves MidAmerican Energy Company ("MidAmerican"). MidAmerican is based in Iowa and serves a relatively small number of customers in Illinois along the border between the two states. *Id.* MidAmerican's energy efficiency programs are not governed by Section 8-104 of the Act as NS-PGL's programs are. Instead, MidAmerican's programs are governed by 220 ILCS 5/8-408, a completely different section of the Act, with different requirements,

including different requirements for cost-effectiveness. *Id.* That portion of the Act calls for individual "programs" to be cost-effective. 220 ILCS 5/8-408(a). Ms. Hinman also cites a Commission finding from ICC Docket Number 12-0544 regarding the approval of energy efficiency programs through the 2013 IPA Procurement Plan. Staff Ex.1.0 at 25. For IPA Procurement Plans, the IPA Act calls for cost-effectiveness at the measure or program level, as opposed to the portfolio level. 220 ILCS 5/16-111.5B. In short, Commission orders in the referenced dockets simply bless the statutory cost-effectiveness criteria applicable to those programs, which in both cases are different from the cost-effectiveness criteria for the Section 8-104 programs at issue in this proceeding. CUB-City Ex. 3.0 at 20.

Staff also points to another Commission Order, this time in ICC Docket Number 08-0104, to claim that previous Commission policy was to evaluate cost-effectiveness at the measure level. Staff Ex.1.0 at 25. That docket involved the approval of Ameren's suite of gas energy efficiency programs prior to the creation of the gas Energy Efficiency Portfolio Standard programs under Section 8-104 of the Act. CUB-City Ex. 3.0 at 20. Costs incurred through those programs were reconciled in Program Year 2 of Ameren's electric EEPS programs in ICC Docket Number 11-0341. *Id.* In 11-0341, Staff used similar arguments, including citing the exact same section of the Final Order in ICC Docket Number 08-0104 to bolster its recommendation. *Id.* The Commission found Staff's argument unconvincing:

Staff also argues that in the Order in Docket No. 08-0104, "the Commission agreed with Staff's proposal to require AIC to monitor projected benefits and costs of certain specific gas efficiency measures and to only market those specific measures if and when projected benefits exceed projected costs." (Staff IB at 5-6, citing Docket 08-0104 Order at 11) As explained by the other Parties, however, the measures to which the Commission referred were "gas griddles and spray valve measures." Unlike the gas griddles and spray valve measures, the SB HVAC tune-up program was not identified in that conclusion as being subject to such measure-specific scrutiny. Although Staff now suggests that in Docket No. 08-0104 AIC never presented the Commission with the cost-effectiveness results

of the gas SB HVAC tune-up measures, the Commission does not believe it would be useful at this time to second-guess the Commission's findings in Docket No. 08-0104 or to speculate on what the Commission might have done differently in Docket No. 08-0104 had the record been different. Final Order in ICC Docket No. 11-0341 at 48-49.

In short, despite an existing Commission finding that rejects Staff's claim that a Commission order related to a gas griddle and spray valve measure is relevant to discussions about creating new policies around cost-effectiveness, Staff has introduced this argument yet again, this time alongside Commission Orders in MidAmerican and IPA dockets that are also not germane to this proceeding. *Id.* The Commission confirmed in ICC Docket Number 11-0341 that measures are not to be terminated simply because they might be cost-ineffective throughout a program year or Plan period.

Staff continually pushes for the standard for cost-effectiveness to be at the measure level, despite statutory language stating that the criteria for cost-effectiveness is at the portfolio level, and despite multiple Commission orders that establish that the standard of cost-effectiveness should be at the portfolio level for EEPS Plans. Docket 10-0564, Order of May 24, 2012 at 92; Docket 07-0539, Order of February 6, 2008 at 21; Docket 10-0568, Order of December 21, 2012 at 30. Staff's repeated insistence on trying to push through an implementation policy that is inconsistent with the governing statute drains Companies' and intevenors' time and resources when there are other issues in these cases that do not already have clear ruling from the Commission. CUB-City Ex. 3.0 at 21-22. The Commission should reject Staff's cost-effectiveness recommendations and reaffirm that, as in previous EEPS dockets, the Commission declines to create cost-effectiveness requirements beyond those in the Act. Intervenors and Staff will always have opportunities to discuss at the SAG or litigate in these dockets the worth of cost-ineffective measures and programs. CUB-City Ex. 3.0 at 22. In this very docket, the AG

and Staff took issue with various cost-ineffective measures, and NS-PGL agreed that at this time there is not a compelling reason to include them. NS-PGL Ex. 18-19. This exchange illustrates that there is no need for a blanket policy that condemns cost-ineffective measures. CUB-City Ex. 3.0 at 22. Cost-ineffective measures in Ameren, ComEd, Nicor, and NS-PGL's portfolios are few and far between. *Id.* From CUB's participation in the SAG and multiple dockets related to the EEPS, it is CUB-City's understanding that intervenors, Staff, and Companies already monitor these measures and programs closely and interrogate whether they have use to the portfolio, such as significantly increasing participation in other cost-effective measures, or providing savings opportunities for hard to reach customers. *Id.*

Further, there are several reasons that Ms. Hinman's recommendations would not be in the best interest of ratepayers, which all hinge on the value that cost-ineffective measures can sometimes add to a portfolio. *Id.* A requirement that programs must pass the TRC at the measure level could lead utilities to overemphasize measures that garner short term, and perhaps small, savings over more comprehensive and long term programs that require time to develop. *Id.* at 22-23. Applying the TRC test at the portfolio level insures that utilities do not have a bias towards measures that only generate savings in the current program year, but instead are able to offer a mix of programs, including measures with long lifetimes. *Id.* at 23. The PUA requires that EEPS programs "represent a diverse cross-section of opportunities for customers of all rate classes to participate in," in addition to passing the TRC at the portfolio level. 220 ILCS 5/8-104(f)(5). Programs intended for hard to reach customer segments, in particular, may not pass the TRC, especially in a program's early stages. CUB-City Ex. 3.0 at 23. Some programs require time to become cost-effective, perhaps through customer education or market changes. *Id.* In the interim, even less than cost-effective programs can serve an important function by

generating awareness of or interest in other programs. *Id.* Provided the entire portfolio passes the TRC, the utilities can and should offer those cost-ineffective measures when appropriate. The intention of the legislature in requiring the EEPS programs was clear: to encourage the growth of energy efficiency in Illinois. *Id.* Ms. Hinman's recommendation could hinder the viability of energy efficiency programs, and prevent consumers from reaping the economic and societal benefits. Id. In the Commission's recent Order regarding ComEd's three year plan, the Commission agreed with this approach and declined to adopt Staff's proposal that ComEd must receive Commission approval before including any cost-ineffective measure. Final Order in ICC Docket No. 13-0495 at 61. The Commission instead accepted ComEd's "possible need for including cost-ineffective measures within its programs," and found that Staff's proposed level of oversight is "not necessary nor is it administratively practical." *Id.* In that docket, the Commission also adopted the same recommendations related to flexibility it adopted in ICC Dockets 10-0570 and 10-0564. The Commission should again reject Staff's proposal to establish a measure-level cost-effectiveness criteria, and instead adopt the requirements related to Company flexibility that were adopted in ICC Dockets 10-0570 and 10-0564.

VI. NS-PGL Should Expand Offerings for Multifamily Residential Customers

CUB-City witness Ms. Devens critiqued the Companies' Multifamily Residential offerings because they provide inadequate opportunities for deeper and more lasting savings and they assume unreasonably low participation levels. CUB-City Ex. 3.0 at 11. As a result, the Commission should require the Companies to revise their Plan with a more comprehensive multifamily program that includes Air Sealing and other measures that provide deeper and more lasting savings. *Id.* at 14-15. Given that PGL's service territory has a large stock of multifamily

housing that is old and inefficient, the Companies should be required to provide a comprehensive and long-lasting portfolio to these customers. CUB-City Ex. 1.0 at 12.

The Companies propose to offer the Direct Install Path jointly with ComEd, while offering the Prescriptive and Custom Paths in a separate but coordinated fashion. NS-PGL Ex. 1.0 at 14. In addition to failing to offer significant and comprehensive Air Sealing measures, the Companies' Multifamily programming is inadequate because it assumes unreasonably low participation levels. CUB-City Ex. 1.0 at 14. Ms. Devens recommends modeling the Multifamily program after one like the Center for Neighborhood Technology's ("CNT") Energy Savers Program, which has a track record of generating savings of 20-30% in other portfolios. *Id.* at 21.

In response to CUB-City witness Ms. Devens' concerns, Mr. Marks argued that the data upon which Ms. Devens based her conclusion that the Companies were offering inadequate programs were from "secondary" sources unrelated to the PGL multifamily sector. NS-PGL Ex. 3.0 at 11. Instead, the Companies ask the Commission to base its decision on this issue on the Potential Study, even though the Companies do not contest the validity of the census data that Ms. Devens used. CUB-City Ex. 3.0 at 11. The Companies' criticism that the data Ms. Devens relied upon was secondary is irrelevant, since Ms. Devens relied upon that data to form her conclusion about the comprehensiveness of the Companies' programs – not to form her conclusion about the particular participation levels assumed. *Id.* Although presentations about the Companies' Potential Study may have been circulated to the SAG, the Commission should not rely on that fact alone to assume that the SAG agrees with the methods and conclusions of the Potential Study since Ms. Devens confirmed that "the potential studies themselves were never circulated to the SAG." *Id.* at 12.

Nevertheless, Mr. Marks testified that the Companies would work with the Center for Neighborhood Technology ("CNT") and the SAG in developing better multi-family savings programs for buildings and that CNT is one of the Companies' vendors. NS-PGL Ex. 5.0 at 13. This commitment by the Companies is welcomed, as Ms. Devens explained the CNT Energy Savers program is an "excellent model" whose best practices should be emulated by the Companies. CUB-City Ex. 3.0 at 14. If the Commission also orders the Companies to include comprehensive Air Sealing in their portfolios, then CUB-City believe that Multifamily customers in the NS and PGL service territories will be properly served with adequate offerings.

VII. Conclusion

The Commission should approve the Companies' Plan with CUB-City's recommendations provided above.

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Respectfully submitted,

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